Chapter 314

1983 REPLACEMENT PART

Income Taxation Generally

GENERAL PROVISIONS

314.011 Definition
314.021 Certain sections of this chapter are applicable to all laws imposing taxes upon or measured by net income
314.075 Evading requirements of law prohibited
314.080 Venue on failure to comply with law

ADJUSTMENT OF RETURNS

314.105 Definitions for ORS 314.105 to 314.135
314.115 Adjustment to correct effect of certain errors; use limited
314.125 When adjustment may be made
314.135 Computation; method of adjustment; credit or set-off limited; recovery after payment limited
314.140 Adjustment of returns of related taxpayers after reallocation of income or deduction on federal return

EXCLUSION FROM GROSS INCOME OF EXCESS PROFITS REPAID OR ELIMINATED IN RENEGOTIATION OF FEDERAL CONTRACT

314.210 Exclusion from gross income of excess profits repaid or eliminated in renegotiation of federal contract
314.220 Refund of excess tax paid
314.230 Time for filing claim for credit or refund

POLLUTION CONTROL FACILITIES

314.250 Federal grants or tax credits for pollution control facility to be offset against state income or excise tax credits
314.255 Collection of taxes due after revocation of certification of pollution control facility; exceptions to tax relief allowed for pollution control facility

METHODS OF ACCOUNTING AND REPORTING INCOME

314.275 Adjustments required by changes in methods of accounting
314.277 Computation where annual accounting period varies
314.280 Allocation of income of financial organization or public utility from business within and without state
314.285 Inventories
314.290 Deferral of tax recognition of gain limited to cases where newly acquired property within Oregon's jurisdiction
314.295 Determination of net income where several taxpayers carry on business under common control

TAX LIABILITY OF TRANSFEREE

314.310 Liability of transferee of taxpayer for taxes imposed on taxpayer

RETURNS

314.355 Returns when accounting period changed
314.360 Information returns
314.363 Combined report of affiliated corporation; contents; determination of Oregon income
314.365 Mandamus to compel return
314.370 Department requiring return or supplementary return
314.380 Furnishing copy of federal return or report; action required when federal return changed
314.385 Form of returns; time for filing
314.395 Payment of tax; interest on delayed return
314.400 Penalty assessed for failure to file report or return or to pay tax when due; interest

COLLECTING DELINQUENT TAXES; LIENS; INTEREST AND ADDITIONS TO TAX; REFUNDS

314.407 Assessment of taxes owing but not submitted with return; time of assessment; docketing of warrant
314.410 Time limit for notice of deficiency
314.412 Assessment of deficiency attributable to involuntary conversion; time limit
314.415 Refunds; credits
314.417 Unpaid tax or withholding lien at time of assessment
314.419 Foreclosure of lien
314.421 When lien valid
314.423 Status of lien
314.425 Examining books, records or persons
314.430 Warrant for collection of taxes
314.440 Tax as debt; termination of taxable period and immediate assessment of tax
314.466 Audits, deficiencies, assessments, refunds and appeals governed by ORS chapter 305

ESTIMATED TAX PROCEDURE

314.505 Estimate of tax liability by corporations
314.515 Instalment schedule for payment of estimated tax
314.525 Underpayment of estimated tax; interest; nonapplicability of penalties

DIVISION OF INCOME FOR TAX PURPOSES

(General Provisions)

314.605 Short title; construction
314.610 Definitions for ORS 314.605 to 314.675
314.615 When allocation of income from business activity required
314.620 When taxpayer is considered taxable in another state

(Allocation of Nonbusiness Income)

314.625 Certain nonbusiness income to be allocated
314.630 Allocation to this state of net rents and royalties
314.635 Allocation to this state of capital gains and losses
314.640 Allocation to this state of interest and dividends
314.645 Allocation to this state of patent and copyright royalties

(Apportionment of Business Income)

314.650 Formula for apportionment of business income
314.655 Determination of "property factor"
314.660 Determination of "payroll factor"
314.665 Determination of "sales factor"

(Procedure Where Ordinary Determination Not Satisfactory)

314.670 Additional methods to determine extent of business activity in this state

(Apportionment of Net Loss)

314.675 Apportionment of net loss; net loss deduction; limitations

(Application)

314.695 Application of ORS 314.280 and 314.605 to 314.675

EFFECT OF MULTISTATE TAX COMPACT

314.705 Computation of tax when income reported as percentage of sales volume
314.710 Application to allocation and apportionment of income

ADMINISTRATIVE PROVISIONS

314.805 Department to administer and enforce laws; enforcement districts; branch offices
314.810 Administering oaths and taking acknowledgments
314.815 Rules and regulations
314.835 Divulging particulars of returns and reports prohibited
314.840 Persons to whom information may be furnished
314.845 Certificate of department as evidence
314.850 Statistics
314.855 Rewards for information
314.860 Disclosure of homeowner or renter refund information to assist in recovery of public assistance overpayments; requests for information public record
314.865 Use of certain information for private benefit prohibited

PENALTIES

314.991 Penalties

CROSS REFERENCES

Administration of certain trusts to comply with federal income taxation provisions, 128.085 to 128.095
Administration of revenue laws generally, Ch. 305
Administrative appeals, 305.265 to 305.285
Appeal procedure, 305.280
Appeal to tax court; small claims alternative, 305.570
Applicability to Ch. 318, 318.031
Authority of tax court to determine deficiency, 305.575
Claim for refund of any tax paid, 305.270
Deficiency procedure, 305.265
Exemption for amounts received for condemnation of Indian tribal lands, 316.783
Hospital facilities public authority, status as public body; certain property and income exempt from taxation, 441.580
Identification cards for persons 60 years of age or older, 305.350 to 305.365
Indian reservation, exemption for income derived from sources therein, 316.777
Interest on deficiency, delinquency or refund, 305.220
Interest or penalties on taxes not affected by taking on pendency of appeal, 305.565
Oregon Mass Transportation Financing Authority, income and property tax exempt status, 391.600
Payment of tax, penalty and interest required before filing complaint with Tax Court to appeal department order, 305.419
Procedure on appeal from order of Department of Revenue; effect of pendency of appeal, 305.560 to 305.575
Refunds ordered by tax court, 305.435
Tax Court, Oregon, 305.405 to 305.555
Verification of documents filed under tax laws, falsification prohibited, 305.810, 305.815
When tax document deemed filed with tax official, 305.820

314.360

Declaration in lieu of oath, 305.810

314.370

Declaration in lieu of oath, 305.810

314.415

Refunds, 305.765

314.425

Witness fees and mileage, 305.200

314.430

Actions in other states for Oregon taxes, 305.610
Department as party to action involving property subject to lien, 305.130
Reciprocal recognition of tax liability, 305.610
Release of lien by department, 305.140

314.705

Multistate Tax Compact, 305.655

314.815

Declaratory rulings respecting regulations, 305.105
Making and filing rules, Ch. 183

314.835

Furnishing names and addresses of corporations to Corporation Commissioner, 57.850

314.840

Certification of information to welfare division, 416.230
Disclosure of inheritance tax information, 118.525
Furnishing information to county in public assistance cases, 418.135

GENERAL PROVISIONS

314.002 [Repealed by 1953 c.310 §3]

314.004 [Repealed by 1953 c.310 §3]

314.006 [Repealed by 1953 c.310 §3]

314.008 [Repealed by 1953 c.310 §3]

314.010 [Repealed by 1953 c.310 §3]

314.011 Definition. As used in ORS 314.021 to 314.080, 314.280, 314.285, 314.295, 314.355, 314.360, 314.365 to 314.385, 314.407, 314.410, 314.415, 314.417 to 314.423, 314.425 to 314.440, 314.605 to 314.675, 314.805 to 314.855 and 314.991, unless the context requires otherwise, "department" means the Department of Revenue. [1957 c.632 §40; 1965 c.152 §24; 1971 c.215 §8; 1977 c.870 §39]

314.012 [Repealed by 1953 c.310 §3]

314.014 [Repealed by 1953 c.310 §3]

314.016 [Repealed by 1953 c.310 §3]

314.018 [Repealed by 1953 c.310 §3]

314.020 [Repealed by 1953 c.310 §3]

314.021 Certain sections of this chapter are applicable to all laws imposing taxes upon or measured by net income. ORS 314.021 to 314.080, 314.277, 314.280, 314.285, 314.295, 314.355, 314.360, 314.365 to 314.385, 314.407, 314.410, 314.415, 314.417 to 314.423, 314.425 to 314.440, 314.605 to 314.675, 314.805 to 314.855 and 314.991 are applicable to all laws of this state imposing taxes upon or measured by net income. [1957 c.632 §2; 1961 c.176 §3; 1965 c.152 §25; 1971 c.215 §9; 1977 c.870 §40]

314.022 [Repealed by 1953 c.310 §3]

314.024 [Repealed by 1953 c.310 §3]

314.026 [Repealed by 1953 c.310 §3]

314.028 [Repealed by 1953 c.310 §3]

314.030 [Repealed by 1953 c.310 §3]

314.032 [Repealed by 1953 c.310 §3]

314.034 [Repealed by 1953 c.310 §3]

314.036 [Repealed by 1953 c.310 §3]

314.038 [Repealed by 1953 c.310 §3]

314.040 [Repealed by 1953 c.310 §3]

314.042 [Repealed by 1953 c.310 §3]

314.044 [Repealed by 1953 c.310 §3]

314.046 [Repealed by 1953 c.310 §3]

314.048 [Repealed by 1953 c.310 §3]

314.050 [Repealed by 1953 c.310 §3]

314.052 [Repealed by 1953 c.310 §3]

314.054 [Repealed by 1953 c.310 §3]

314.056 [Repealed by 1953 c.310 §3]

314.058 [Repealed by 1953 c.310 §3]

314.060 [Repealed by 1953 c.310 §3]

314.062 [Repealed by 1953 c.310 §3]

314.064 [Repealed by 1953 c.310 §3]

314.066 [Repealed by 1953 c.310 §3]

314.068 [Repealed by 1953 c.310 §3]

314.070 [Repealed by 1953 c.310 §3]

314.072 [Repealed by 1953 c.310 §3]

314.074 [Repealed by 1953 c.310 §3]

314.075 Evading requirements of law prohibited. No person, or officer or employe of a corporation or a member or employe of a partnership, shall, with intent to evade any requirement of any law imposing taxes upon or measured by net income or any lawful requirement of the department thereunder:

(1) Fail to pay any tax or to make, sign or verify any return or to supply any information required;

(2) Make, render, sign or verify any false or fraudulent return or statement; or

(3) Supply any false or fraudulent information. [1957 c.632 §3 (enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

314.080 Venue on failure to comply with law. The failure to do any act required by or under any law imposing taxes upon or measured by net income shall be deemed an act committed in part at the office of the department in Oregon. [1957 c.632 §3 (enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

ADJUSTMENT OF RETURNS

314.105 Definitions for ORS 314.105 to 314.135. (1) For purposes of ORS 314.105 to 314.135, the term "determination" means:

(a) A decision by the Oregon Tax Court which has become final;

(b) A closing agreement made under ORS 305.150;

(c) A final disposition by the department of a claim for refund. For purposes of this paragraph a claim for refund shall be deemed finally disposed of by the department as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and as to items with respect to which the claim was

disallowed, in whole or in part, or as to items applied by the department in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(d) Under regulations prescribed by the department, an agreement for purposes of ORS 314.105 to 314.135 signed by the director and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax for any taxable period.

(2) For purposes of ORS 314.105 to 314.135, the term "taxpayer" means any person or entity subject to a tax under the applicable revenue law.

(3) For purposes of ORS 314.105 to 314.135, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(a) Husband and wife;

(b) Grantor and fiduciary;

(c) Grantor and beneficiary;

(d) Fiduciary and beneficiary, legatee, or heir;

(e) Decedent and decedent's estate;

(f) Partner;

(g) Member of an affiliated group of corporations as defined in ORS 317.360 (2) (1981 Replacement Part); or

(h) Member of a unitary group of corporations which is permitted or required by the department to file a combined tax return. [1971 c.248 §2]

314.110 [1953 c.702 §1; 1957 c.337 §4; repealed by 1971 c.248 §6]

314.115 Adjustment to correct effect of certain errors; use limited. (1) If a determination (as defined in ORS 314.105) is described in one or more of the paragraphs of ORS 314.125 and, on the date of the determination, correction of the effect of the error referred to in the applicable subsection of ORS 314.125 is prevented by the operation of any law or rule of law, other than ORS 314.105 to 314.135 and other than ORS 305.150, then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in ORS 314.135.

(2) Except in cases described in ORS 314.125 (3)(b) and (4), an adjustment shall be made under this section only if:

(a) In case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under ORS 314.135, there is adopted in the determination a position maintained by the department, or

(b) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under ORS 314.135, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made, and the position maintained by the department in the case described in paragraph (a) of this subsection or maintained by the taxpayer in the case described in this paragraph is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(3) In the case of a determination described in ORS 314.125 (3)(b) (relating to certain exclusions from income), adjustment shall be made under this section only if assessment of a deficiency for the taxable year in which the item is includable or against the related taxpayer was not barred, by any law or rule of law, at the time the department first maintained, in a notice of deficiency sent pursuant to ORS 305.265 or before the Oregon Tax Court, that the item described in ORS 314.125 (3)(b) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(4) In the case of a determination described in ORS 314.125 (4) (relating to disallowance of certain deductions and credits), adjustment shall be made under ORS 314.105 to 314.135 only if credit or refund of the overpayment attributable to the deduction or credit described in ORS 314.125 which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the department or before the Oregon Tax Court, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(5) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in ORS 314.125 (3)(b)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or complaint in the Oregon Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of determi-

nation. [1971 c.248 §3; 1979 c.689 §24]

314.120 [1953 c.702 §2; repealed by 1971 c.248 §6]

314.125 When adjustment may be made. The circumstances under which the adjustment provided in ORS 314.115 is authorized are as follows:

(1) The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3)(a) The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(b) The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includable in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (sections 641 and following, relating to estates, trusts, and beneficiaries) of part I of subchapter J of the Internal Revenue Code of 1954, or corresponding provisions of subsequent internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be in respect of the related taxpayer.

(6) The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income, or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted, or disallowed, as the case may be, in respect of a related taxpayer described in ORS 314.105 (3)(g).

(7)(a) The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in paragraph (b) of this subsection, any of the errors described in paragraph (c) of this subsection.

(b) The taxpayer with respect to whom the erroneous treatment occurred must be the taxpayer with respect to whom the determination is made; a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title; or a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) of the Internal Revenue Code of 1954.

(c) With respect to a taxpayer described in paragraph (b) of this subsection there was an erroneous inclusion in, or omission from, gross income, there was an erroneous recognition, or nonrecognition, of gain or loss, or there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible. [1971 c.248 §4; 1983 c.162 §50]

314.130 [1953 c.702 §3; repealed by 1971 c.248 §6]

314.135 Computation; method of adjustment; credit or set-off limited; recovery after payment limited. (1)(a) In computing the amount of an adjustment under ORS 314.105 to 314.135 there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of:

(A) The sum of the amount shown as the tax by the taxpayer on the return of the taxpayer, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus the amounts previously assessed (or collected without assessment) as a deficiency, over

(B) The amount of refunds (as defined in ORS 314.415) made.

(b) There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment

of the item in the computation of gross income, taxable income, and other matters under ORS 316.317 or ORS chapter 317 or 318. A similar computation shall be made for any other taxable year affected, or treated as affected, by an Oregon net loss for prior years (as provided by ORS 317.476), by a net operating loss deduction (as defined in the federal Internal Revenue Code) or by a capital loss carryback or carryover (as defined in the federal Internal Revenue Code) determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(2) The adjustment authorized in ORS 314.115 (1) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the department with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (1) of this section and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in ORS 314.105 (1)(d), an adjustment has been made by the assessment and collection of a deficiency of the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (1) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(3) The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under ORS 314.105 to 314.135, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under ORS 314.105 to 314.135, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment. [1971 c.248 §5; 1983 c.162 §51]

314.140 Adjustment of returns of related taxpayers after reallocation of income or deduction on federal return. (1) Whenever there has been an adjustment of federal income tax liability involving a reallocation of any item of income or deduction between related taxpayers, and when such adjustment results in the assessment of a tax deficiency or the issuance of a refund check or both, then for Oregon income tax purposes, whether or not the department effects a similar reallocation of income or deduction for the same tax year, said federal tax deficiency and additions thereto shall be deducted (to the extent otherwise provided by law) by the taxpayer paying the same, and said federal tax refund, including interest thereon, shall be returned (to the extent otherwise required by law) by the taxpayer receiving the same.

(2) If, however, the related taxpayers involved (or their authorized representatives) so elect in accordance with subsection (3), then the refund of one, with interest thereon, shall be treated as a reduction of the deficiency of the other, including additions thereto, so that only the net amount of deficiency shall be deducted or the net amount of refund shall be returned, as the case may be.

(3) An election under subsection (2) shall be in writing, signed by each related taxpayer or his authorized representative, and filed with the department prior to the expiration of the applicable period of limitation with respect to the adjustment of the last open state return of either related taxpayer affected by the federal tax deficiency or refund. Such election shall constitute a waiver of any statute of limitations to permit the adjustment of all returns of the related taxpayers for the purpose only of effecting a reallocation of income or deductions similar to that made by the federal tax authorities and to adjust the federal income tax deductions resulting therefrom. [1953 c.702 §4]

314.155 [1965 c.178 §8; 1969 c.493 §79; repealed by 1983 c.162 §57]

314.160 [1965 c.178 §9; 1969 c.493 §80; repealed by 1983 c.162 §57]

314.165 [1965 c.178 §10; 1969 c.493 §81; repealed by 1983 c.162 §57]

314.170 [1965 c.178 §11; repealed by 1969 c.493 §98]

314.175 [1965 c.178 §12; 1969 c.493 §82; repealed by 1983 c.162 §57]

EXCLUSION FROM GROSS INCOME OF EXCESS PROFITS REPAID OR ELIMINATED IN RENEGOTIATION OF FEDERAL CONTRACT

314.210 Exclusion from gross income of excess profits repaid or eliminated in renegotiation of federal contract. If a renegotiation or repricing has been or shall be made in respect to a contract with the United States or any agency thereof, or any subcontract thereunder, which was entered into by a taxpayer subject to a tax under any law of this state imposing a tax on or measured by net income and the amount of excessive profits received or accrued under the contract or subcontract during a taxable year or years (hereafter referred to in this section as prior taxable year or years) has been eliminated, and

(1) If in a taxable year ending after December 31, 1940, a taxpayer is required to pay or repay to the United States or any agency thereof the amount of profits so eliminated, or

(2) If the amount of profits so eliminated is applied as an offset against any other amount due the taxpayer,

then the profits so eliminated shall be excluded from gross income for the prior taxable year or years if they were included in gross income for such prior taxable year or years under any law of this state imposing a tax on or measured by net income. [Formerly 317.605]

314.220 Refund of excess tax paid. (1) If a final tax return has been filed by the taxpayer for a taxable year ending after December 31, 1940, and if the tax return included excessive profits that were subsequently eliminated on renegotiation or repricing and paid or repaid or offset as provided in ORS 314.210, the taxpayer shall, upon the filing of a properly verified claim for refund under regulations prescribed by the department, be refunded an amount equal to the difference between the amount of tax paid by the taxpayer for such taxable year and the amount of the tax computed for such taxable year after the exclusion of the excessive profits which have been paid, repaid or offset.

(2) If a taxpayer has paid any tax or interest or penalty because of the provisions of chapter 226, Oregon Laws 1945, then the taxpayer shall, upon the filing of a properly verified claim for refund under regulations prescribed by the department, be refunded such tax or interest or penalty so paid, without interest. No claim for any tax or interest or penalty under chapter 226, Oregon Laws 1945, shall be made or collected after July 16, 1949.

(3) The amount to be refunded to the taxpayer under subsections (1) and (2) of this section shall be reduced by the amount of any refund or credit allowed or received by the taxpayer under the provisions of chapter 226, Oregon Laws 1945.

(4) Notwithstanding any other provisions of ORS 314.210 to 314.230, no refund shall be made of any tax allowed as a credit or otherwise taken into consideration in reducing the profits eliminated or the amount refunded upon renegotiation, whether or not the renegotiation agreement contains a recapture clause.

(5) If a refund allowed under this section had been allowable under chapter 226, Oregon Laws 1945, and the taxpayer could not have received such refund under chapter 226, Oregon Laws 1945, without the imposition of federal excess profits taxes upon such refund, then the amount of the refund allowed under this section shall be reduced by the amount of excess profits taxes which would have been imposed upon such refund after deducting from such excess profits taxes the amount of federal corporation income taxes which would have been imposed upon such refund if such refund were subject only to such federal corporation income taxes. [Formerly 317.610]

314.230 Time for filing claim for credit or refund. Notwithstanding the provisions of any statute of limitations, claim for any credit or refund provided for in ORS 314.210 to 314.230 shall be made within two years from July 16, 1949, or from the date of final determination of the amount of excessive profits under a contract or subcontract described in ORS 314.210, except that if ORS 314.220 (4) is declared unconstitutional, no refund or credit resulting from such declaration shall be allowed unless a properly verified claim therefor is filed with the department under ORS 314.220 or under chapter 226, Oregon Laws 1945, within two years from the date on which the excessive profits involved were finally determined. [Formerly 317.615]

POLLUTION CONTROL FACILITIES

314.250 Federal grants or tax credits for pollution control facility to be offset against state income or excise tax credits. If a taxpayer obtains grants or tax credits from

the Federal Government, other than investment credits granted under section 46 of the Internal Revenue Code of 1954, in connection with a pollution control facility which has been certified by the Environmental Quality Commission, the income or excise tax credits which such taxpayer would be entitled to after any such grant or credit has been made available to or received by such taxpayer, shall be offset or reduced by such federal grants or tax credits, dollar for dollar. Taxpayers applying for such grants shall notify the Department of Revenue of each such application, and of the receipt of any such grant or tax credits. Notification shall be made in the taxpayer's next Oregon income or excise tax return. [1967 c.592 §18]

314.255 Collection of taxes due after revocation of certification of pollution control facility; exceptions to tax relief allowed for pollution control facility. (1) Upon receipt of notice of the revocation of a certification of a pollution control facility pursuant to ORS 468.185 (1), the Department of Revenue immediately shall collect any taxes due by reason of such revocation, and shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(2) No tax relief shall be allowed under ORS 307.405, 316.097 or 317.116 for any pollution control facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or form thereof, except where such facilities are used for resource recovery. [1967 c.592 §§16, 17; 1969 c.493 §83; 1979 c.531 §5]

METHODS OF ACCOUNTING AND REPORTING INCOME

314.275 Adjustments required by changes in methods of accounting. (1) In computing a taxpayer's taxable income for any tax year (referred to in this section as the "year of the change"), under any law imposing taxes upon or measured by net or taxable income and administered by the Department of Revenue, if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding tax year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted. The adjustments allowed by this section are to be made regardless of whether a change is requested by the taxpayer or required by the department or required by the enactment of the Personal Income Tax Act of 1969 or amendments to the Corporation Excise Tax Law of 1929 or the Corporation Income Tax Act of 1955, and, if required, whether it is regarded as a change in the taxpayer's method of keeping books or a change in the method of reporting.

(2)(a) If the method of accounting from which the change is made was used by the taxpayer in computing taxable income for the two tax years preceding the year of the change, and the increase in taxable income for the year of change which results solely by reason of the adjustments required by subsection (1) of this section exceeds $1,000, then the tax attributable to such increase in taxable income shall not be greater than the aggregate of the taxes which would result if one-third of such increase were included in taxable income for the year of the change and one-third of such increase were included for each of the two preceding tax years.

(b) If the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (1) of this section exceeds $1,000, and the taxpayer establishes taxable income (under the new method of accounting) for one or more tax years consecutively preceding the tax year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made, then the tax attributable to such increase in taxable income shall not be greater than the net increase in taxes which would result if the adjustments required by subsection (1) of this section were allocated to the tax year or years specified in this paragraph to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (1) of this section was allocated to the tax year of the change.

(3) In the case of any change described in subsection (1) of this section, the taxpayer may, in such manner and subject to such conditions as the department may by regulations prescribe, take the adjustments required by subsection (1) of this section into account in computing the tax imposed for the tax year or years permitted under such regulations.

(4) This section shall not apply to a change affecting taxable income under the Personal Income Tax Act of 1969, the Corporation Excise Tax Law of 1929 or the Corporation Income Tax Act of 1955 by reason of a change to the instal-

ment method on the taxpayer's federal income tax return. [1957 c.544 §2; 1969 c.493 §84; 1983 c.162 §52]

314.277 Computation where annual accounting period varies. (1) A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always upon whatever date such same day of the week last occurs in a calendar month or on whatever date such same day of the week falls which is nearest to the last day of the calendar month, may (in accordance with regulations prescribed by the department) elect to compute his taxable income for purposes of ORS chapters 314, 317 and 318 on the basis of such annual period.

(2) In any case in which the effective date or the applicability of any provision of ORS chapters 314, 317 and 318 is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described in subsection (1) of this section shall be treated as beginning on the first day of the calendar month beginning nearest to the first day of such taxable year, or as ending with the last day of the calendar month ending nearest to the last day of such taxable year, as the case may be.

(3) In the case of a change from or to a taxable year described in subsection (1) of this section, if such change results in a short period of 359 days or more, or of less than seven days, ORS 314.355 shall not apply; and if such change results in a short period of less than seven days, such short period shall be added to and deemed part of the following tax year. [1961 c.176 §§2, 4; 1969 c.493 §85]

314.280 Allocation of income of financial organization or public utility from business within and without state. (1) If a taxpayer has income from business activity as a financial organization or as a public utility (as defined respectively in ORS 314.610 (4) and (6)) which is taxable both within and without this state (as defined in ORS 314.610 (8) and 314.615), the determination of net income shall be based upon the business activity within the state, and the department shall have power to permit or require either the segregated method of reporting or the apportionment method of reporting, under rules and regulations adopted by the department, so as fairly and accurately to reflect the net income of the business done within the state.

(2) The provisions of subsection (1) of this section dealing with the apportionment of income earned from sources both within and without the State of Oregon are designed to allocate to the State of Oregon on a fair and equitable basis a proportion of such income earned from sources both within and without the state. Any taxpayer may submit an alternative basis of apportionment with respect to his own income and explain that basis in full in his return. If approved by the department that method will be accepted as the basis of allocation. [1957 c.632 §4 (enacted in lieu of 316.205 and 317.180); 1963 c.319 §1; 1965 c.152 §22]

314.285 Inventories. Whenever, in the opinion of the department, the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the department may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income. [1957 c.632 §5 (enacted in lieu of 316.210 and 317.185)]

314.290 Deferral of tax recognition of gain limited to cases where newly acquired property within Oregon's jurisdiction. (1) For tax years beginning on and after January 1, 1957, where laws relating to taxes imposed upon or measured by net income make provision for deferral of tax recognition of gain upon the voluntary or involuntary conversion or exchange of tangible real or personal property, such provisions shall be limited to those conversions or exchanges where the property newly acquired by the taxpayer has a situs within the jurisdiction of the State of Oregon.

(2) For tax years beginning on and after January 1, 1979, subsection (1) of this section shall not apply to the principal residence newly acquired by the taxpayer even if its situs is outside the jurisdiction of the State of Oregon. [1957 c.102 §2; 1979 c.579 §4]

314.295 Determination of net income where several taxpayers carry on business under common control. When the department has reason to believe that any taxpayer so conducts a trade or business as either directly or indirectly to distort its true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, by selling the commodities or services in which it deals at less than the fair price for which they might have been obtained therefor, or buying commodities or services at more than

the fair price for which they might have been obtained, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, it may require the facts it considers necessary for the proper computation of the entire net income and the net income properly attributable to the state, and in determining the same the department shall have regard to the fair profits which would normally arise from the conduct of the trade or business.
[1957 c.632 §10 (enacted in lieu of 316.560 and 317.375)]

TAX LIABILITY OF TRANSFEREE

314.310 Liability of transferee of taxpayer for taxes imposed on taxpayer. (1) When a taxpayer ceases to exist or is no longer subject to the jurisdiction of this state (although subject to the courts of a state having comity or reciprocity with the State of Oregon), being indebted for taxes upon or measured by net income, the transferee of the money or property of the taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the taxpayer and accruing or accrued upon the date of transfer, to the extent of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the taxpayer. However, no heir, legatee, devisee or distributee of an estate of a deceased person shall be liable as a transferee of the decedent or of the decedent's estate (a) after the Department of Revenue's certificate of release with respect to such decedent's estate has been filed with the clerk of the probate court pursuant to ORS 316.387, or (b) where no release has been filed but 90 days have elapsed following a request to the department by the decedent's representative for such release, unless within that time the probate court, upon application by the department, finds reasonable grounds for extending the period and allows the department additional time in which to issue a release.

(2) The amount for which a transferee of the property of a taxpayer is liable in respect of any such tax or deficiency in tax, including penalties and interest, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee and collected and paid in the same manner and subject to the same provisions and limitations as would apply to the taxpayer had he or it continued subject to the jurisdiction of this state, except as provided in this section.

(3) As used in this section, the term "transferee" means one not a bona fide purchaser for value and includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation which is a party to a corporate reorganization, and persons acting on behalf of such transferees in a fiduciary capacity.

(4) The period of limitation for assessment of any such liability of a transferee shall be as follows:

(a) In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer;

(b) In the case of the liability of a transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the taxpayer;

(c) If, before the expiration of the period of limitation for the assessment of the liability of the transferee, as set forth in paragraph (a) or (b) of this subsection, a court proceeding for the collection of the tax or liability in respect thereof has been filed against the taxpayer or last preceding transferee, then the period of limitation for assessment of the liability of the transferee shall expire one year after final judgment has been rendered in the court proceedings;

(d) If, before the expiration of the time prescribed in paragraph (a), (b) or (c) of this subsection for the assessment of the liability, both the Department of Revenue and the transferee have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period of extension agreed upon. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period of extension previously agreed upon.

(5) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period which would be in effect had death or termination of existence not occurred.

(6) In the absence of notice to the Department of Revenue of the existence of a fiduciary relationship, notice of liability enforceable under

this section in respect of a tax or deficiency in tax, including penalties and interest thereon, imposed upon or measured by net income, if mailed to the person subject to the liability at his last-known address, shall be sufficient for the purposes of this section even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. [1955 c.367 §2; 1969 c.493 §86]

RETURNS

314.355 Returns when accounting period changed. If a taxpayer, with the approval of the department, changes the tax year on the basis of which net income is computed, the taxpayer shall, at the time and in the manner the department prescribes, make a separate return of net income received during the period intervening between the end of his former income year and the beginning of the new income year. [1957 c.632 §6 (enacted in lieu of 316.520)]

314.360 Information returns. (1) Fiduciaries required to make returns under laws imposing tax upon or measured by net income, proprietorships, partnerships, corporations, joint stock companies or associations or insurance companies, having places of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, purchasers of stumpage and all officers and employes of the state or of any political subdivisions of the state, having the control, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, dividends, salaries, fees, wages, the purchase price of stumpage, emoluments or other fixed or determinable annual or periodical gains, profits and income, paid or payable, during any year to any taxpayer, shall make return thereof, under oath, to the department, under such regulations and in such form and manner and to such extent as it may prescribe.

(2) Every person doing business as a broker shall, when required by the department, render a correct return duly verified under oath, under such rules and regulations as the department may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the department may require, as to each of such customers, as will enable the department to determine whether all income tax due on profits or gains of such customers has been paid. [1957 c.632 §7 (enacted in lieu of 316.535); 1959 c.305 §1]

314.363 Combined report of affiliated corporation; contents; determination of Oregon income. (1) The Department of Revenue may permit or require an affiliated corporation that is subject to taxation under ORS chapter 317 or 318 (or both) and that is a part of a unitary group of affiliated corporations to file a combined report covering the unitary operation of the group. The report shall contain such information as shall be designated in rules adopted by the department.

(2) An affiliated corporation is a corporation that is a member of a group of two or more corporations with a common owner or owners, either corporate or noncorporate, where more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by the common owner or owners or by one or more of the member corporations.

(3) An affiliated corporation is a part of a unitary group when it is engaged in business activities which are integrated with, dependent upon, or which contribute to the business activities of the group as a whole, and the business activities of the group are carried on and are taxable in more than one state.

(4) The income attributable to the Oregon activities of an affiliated corporation which is a part of a unitary group of affiliated corporations shall be determined by the apportionment of the entire business net income of the unitary group and the allocation of nonbusiness income of the corporation, using the factors and methods described in ORS 314.605 to 314.675 and the rules of the department. [1975 c.760 §2]

314.365 Mandamus to compel return. If a taxpayer fails to file a return within 60 days of the time prescribed by any law imposing a tax upon or measured by net income, the judge of the Oregon Tax Court, upon petition of the department, or of any 10 taxable residents of the state, shall issue a writ of mandamus requiring the person to file a return. The order of notice upon the petition shall be returnable not later than 10 days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. An appeal may be taken from the judgment by the taxpayer or the department to the Supreme Court in the manner that appeals are taken in suits in equity, irrespective of the amounts involved. All writs and processes may be issued from the office of the clerk of the tax court, and, except as otherwise

provided in this section, shall be returnable as the court shall order. [1957 c.632 §8 (enacted in lieu of 316.550 and 317.365); 1961 c.533 §51]

314.370 Department requiring return or supplementary return. If the department is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, it may require from the taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of the applicable tax law. If from a supplementary return, or otherwise, the department finds that any items of taxable income have been omitted from the original return it may require the items so omitted to be disclosed under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provisions of law whether or not the department required a return or a supplementary return under this section. [1957 c.632 §9 (enacted in lieu of 316.555)]

314.380 Furnishing copy of federal return or report; action required when federal return changed. (1) Every taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year, which he has filed or may file with the Federal Government, showing his net income and how obtained and the several sources from which derived. Every taxpayer shall, upon request of the department, furnish a copy of any federal revenue agent's report made upon any audit or adjustment of the taxpayer's federal income tax return.

(2) If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, resulting in recognition of $250 or more of additional net income which is subject to tax by this state, the taxpayer shall report such change or correction in federal taxable income to the department within 90 days after the final determination of such change or correction. The taxpayer may file a report of a federal change or correction, and the report of the federal change or correction shall be treated by the department as a claim for refund pursuant to ORS 314.415 and, notwithstanding the limitations of ORS 314.415, shall be deemed timely if filed with the department within one year after the federal correction has become final. The preceding sentence shall apply to all tax years for which federal changes or corrections become final after December 31, 1959. The report shall either concede the accuracy of such determination or state wherein the taxpayer believes it to be erroneous. Any taxpayer filing an amended federal income tax return reporting $250 or more of additional taxable income which is subject to tax by this state shall also file an amended return with the department within 90 days thereafter. [1957 c.632 §11 (enacted in lieu of 316.565 and 317.380); 1963 c.509 §1]

314.385 Form of returns; time for filing. (1) Returns shall be in such form as the department may, from time to time, prescribe and shall be filed with the department on or before the 15th day of the fourth month after the expiration of the tax year, except that the final return of a decedent shall be filed at any time following his death, to and including the 15th day of the fourth month after expiration of his regular tax year. The department may allow further time for filing returns except that no extension may be granted for more than six months. The 1959 amendment to this subsection applies to tax years beginning after December 31, 1958.

(2) There shall be annexed to the return a statement verified by a written declaration of the taxpayer making the return to the effect that the statements contained therein are true.

(3) The department shall prepare blank forms for the returns and distribute them throughout the state. Such forms shall be furnished the taxpayer upon request, but failure to receive or secure a form shall not relieve the taxpayer from the obligation of making any return required by law. [1957 c.632 §12 (enacted in lieu of 316.545 and 317.355); 1959 c.156 §1; last sentence of subsection (1) derived from 1959 c.156 §3; 1963 c.281 §1]

314.395 Payment of tax; interest on delayed return. (1) The tax shall be paid to the department at the time fixed by ORS 314.385 for filing the return.

(2) When the time for filing a return of income is extended at the request of the taxpayer, interest at the rate established under ORS 305.220 for each month or fraction of a month from the time the return was originally required to be filed to the time of payment shall be added and paid. [1969 c.166 §2; 1971 c.354 §3; 1973 c.402 §17; 1975 c.593 §13; 1980 s.s. c.20 §24; 1982 s.s.1 c.16 §6]

314.400 Penalty assessed for failure to file report or return or to pay tax when due; interest. (1) If a taxpayer (a) fails to file

a report or return of tax or tax liability or of income at the time prescribed therefor, or (b) fails to pay a tax at the time the tax becomes due, there shall be added to the amount of tax required to be shown as tax on the report or return a delinquency penalty of five percent of the amount of such tax.

(2) If the failure to file a report or return continues for a period in excess of three months after the due date:

(a) There shall be added to the amount of tax required to be shown on the return a failure to file penalty of 20 percent of the amount of such tax; and

(b) Thereafter the department may send a notice and demand to the person to file a report or return within 30 days of the mailing of the notice. If after such notice and demand no return or report is filed within the 30 days, the department may determine the tax according to the best of its information and belief, assess the tax with appropriate penalty and interest plus an additional penalty of 25 percent of the tax deficiency determined by the department and give written notice of the determination and assessment to the person required to make the filing.

(3) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if:

(a) There is a failure to file a report or return with intent to evade the tax;

(b) A report or return was falsely prepared and filed with intent to evade the tax; or

(c) A false claim was intentionally filed under ORS 310.630 to 310.690.

(4) Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for each month or fraction of a month, computed from the time the tax became due, during which the tax remains unpaid.

(5) Each penalty imposed under this section is in addition to any other penalty imposed under this section. However, the total amount of penalty imposed under this section with respect to any deficiency shall not exceed 100 percent of the deficiency. [1971 c.354 §2; 1975 c.593 §14; 1977 c.870 §41; 1980 s.s. c.7 §25; 1981 c.724 §4; 1982 s.s.1 c.16 §7]

Note: Section 5, chapter 724, Oregon Laws 1981, provides:

Sec. 5. The amendments contained in sections 3 and 4 of this Act shall apply to all reports, returns and claims not filed or open to audit on the effective date of this Act [November 1, 1981].

COLLECTING DELINQUENT TAXES; LIENS; INTEREST AND ADDITIONS TO TAX; REFUNDS

314.405 [1957 c.632 §13 (enacted in lieu of 316.605 and 317.405); 1959 c.212 §1; subsection (8) derived from 1959 c.212 §3; 1961 c.504 §1; 1965 c.554 §1; 1969 c.166 §3; 1969 c.493 §87; 1971 c.333 §1; 1971 c.354 §4; 1973 c.402 §29; 1975 c.593 §15; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.405)]

314.407 Assessment of taxes owing but not submitted with return; time of assessment; docketing of warrant. For the purposes of ORS 314.011, 314.021, 314.407 and 314.417 to 314.423:

(1) In the case of a return submitted to the department with payment of less than the amount of tax computed to be due, the difference between the tax computed to be owing by the taxpayer and the tax submitted with the return is considered as "assessed" on the due date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.

(2) The term "time of assessment" means:

(a) In the case of an assessment made under ORS 305.265 and 314.410, 30 days after the date the notice of assessment is mailed to the taxpayer;

(b) In the case of an assessment made under ORS 314.440, five days after the date the notice of assessment is mailed to the taxpayer; or

(c) In the case of a tax assessed as described in subsection (1) of this section, the due date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.

(3) Unless a warrant has been docketed in the county in which property is located, no warrant shall be considered as docketed with respect to that property. [1971 c.215 §2; 1977 c.870 §42]

314.410 Time limit for notice of deficiency. (1) At any time within three years after the return was filed, the department may give notice of deficiency as prescribed in ORS 305.265.

(2) If the department finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return, notice of the deficiency may be given at any time within five years after the return was filed.

(3) The limitations to the giving of notice of a deficiency provided in this section shall not apply to a deficiency resulting from false or

fraudulent returns, or in cases where no return has been filed. If the Commissioner of Internal Revenue or other authorized officer of the Federal Government makes a correction resulting in a change in income tax for state income tax purposes, and a report thereof is filed with the department by the taxpayer in accordance with ORS 314.380, then notice of a deficiency under any law imposing tax upon or measured by income for the corresponding tax year may be mailed within one year after such federal correction becomes final, or within the applicable three-year or five-year period prescribed in subsections (1) and (2) of this section, respectively, whichever period expires the later. The limitations to the giving of notice of a deficiency shall not apply where a taxpayer has failed to file any report or amended return required by ORS 314.380 until three years after the federal correction becomes final.

(4) The tax deficiency must be assessed and notice of tax assessment mailed to the taxpayer or authorized representative, who is authorized in writing, within one year from the date of the notice of deficiency unless an extension of time is agreed upon as prescribed in subsection (6) of this section.

(5) Notwithstanding other provisions of this section, the period for the assessment of any deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's principal residence, as provided in the federal Internal Revenue Code as applicable to the Personal Income Tax Act of 1969, shall not expire prior to the expiration of three years from the date the department is notified by the taxpayer of:

(a) The cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain; or

(b) The taxpayer's intention not to purchase a new residence; or

(c) A failure to purchase a new residence within the period prescribed in the federal Internal Revenue Code as applicable to the Personal Income Tax Act of 1969.

(6) If, prior to the expiration of any period of time prescribed in this section for giving of notice of deficiency or of assessment, the department and the taxpayer consent in writing to the notice of deficiency being mailed or deficiency being assessed after the expiration of such prescribed period, notice of such deficiency may be mailed or the deficiency assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

(7) In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback, notice of such deficiency may be mailed at any time before the expiration of the period within which notice of a deficiency for the taxable year of the net operating loss which results in such carryback may be mailed.

(8) Notwithstanding the other provisions of this section, if any taxpayer agreed with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for giving notices of deficiencies and assessing deficiencies in federal income tax for any year, the period for mailing notices of deficiencies of tax for such years shall be within the limits expressed in subsections (1) to (7) of this section or six months after the date of the expiration of the agreed period for assessing deficiencies in federal income tax, whichever period expires the later. [1957 c.632 §14 (enacted in lieu of 316.610 and 317.410); 1959 c.212 §2; 1959 c.591 §20; subsection (8) derived from 1959 c.212 §3 and 1959 c.591 §21; 1963 c.509 §2; 1963 c.627 §1 (referred and rejected); 1969 c.405 §1; 1969 c.493 §§88, 88a; 1971 c.507 §1; 1977 c.870 §43; 1983 c.162 §53]

314.412 Assessment of deficiency attributable to involuntary conversion; time limit. Notwithstanding ORS 314.410, the period for the assessment of any deficiency attributable to any part of the gain realized upon an involuntary conversion as provided in the federal Internal Revenue Code which applies to the Personal Income Tax Act of 1969 or as provided in the corporate excise tax or corporate income tax laws, shall not expire prior to the expiration of three years from the date the department is notified by the taxpayer of:

(1) The replacement of the converted property which the taxpayer claims results in nonrecognition of any part of such gains; or

(2) The taxpayer's intention not to replace such property; or

(3) A failure of the taxpayer to replace the property within the period prescribed in the federal Internal Revenue Code which applies to the Personal Income Tax Act of 1969, in the corporation excise tax laws or in the corporation income tax laws, whichever is applicable. [1975 c.705 §2]

314.415 Refunds; credits. (1)(a) If the amount of the tax found due on the return as originally filed and as computed by the taxpayer or corrected by the department is less than the

amount theretofore paid, the excess shall be refunded by the department with interest at the rate established under ORS 305.220, for each month or fraction of a month during a period beginning four months after the due date of the return or the date the tax was paid, whichever is the later, to the time the refund is made.

(b) No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with ORS 305.270.

(c) No interest on a refund to an employe of a tax withheld by an employer shall be paid for any period prior to the time the employe filed a personal income tax return for the tax year involved, nor for any period prior to the day which is four months after the date when the employe's annual return for that year was filed or was due, whichever is the later.

(d) The amount of the refund, exclusive of interest thereon, shall not exceed the portion of the tax paid during such period preceding the filing of the claim or, if no claim is filed, then during the period preceding the allowance of the refund during which a claim might have been filed. Where there has been an overpayment of any tax imposed, the amount of the overpayment and interest thereon shall be credited against any tax, penalty or interest then due from the taxpayer, and only the balance shall be refunded.

(2) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1) of this section, if, prior to the expiration of the period prescribed in paragraph (b) of subsection (1) of this section, the department and the taxpayer consent in writing to the refund of tax after the expiration of the period prescribed, the refund shall be made at any time prior to the expiration of the period agreed upon and no refund shall be made or allowed after the expiration of the period agreed upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the department. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The department shall have the power to consent to such refund only where the taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the applicable three-year or five-year period prescribed in ORS 314.410 (1) and (2).

(3) If the claim for credit or refund relates to an overpayment on account of the deductibility by the taxpayer of the worthlessness of a share of stock in a corporation, of the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the three-year period of limitation prescribed in subsection (1) of this section, the period shall be seven years from the date prescribed by law for the filing of the return for the year with respect to which the claim is made; provided, that if the claim is made in reliance upon this subsection after the expiration of the three-year period prescribed in paragraph (b) of subsection (1) of this section, no interest shall be allowed with respect to any credit or refund determined to be due upon such claim for the period beginning at the close of the three-year period prescribed in subsection (1) of this section and ending at the expiration of six months after the date on which the claim is filed.

(4)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the three-year period of limitation prescribed in subsection (1) of this section, the period shall be that period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which results in such carryback; except that and with respect to an overpayment attributable to the creation of, or an increase in, net operating loss as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a) (1) (A) of the Internal Revenue Code of 1954), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in paragraph (a) or (b) of subsection (1) of this section or subsection (2) of this section, whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback. If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to closing agreements, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in this subsection. To the extent that the net operating loss carryback was not an issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has become final, the claimed credit or refund appli-

cable to that net operating loss carryback may be allowed or made under this subsection.

(b) For purposes of subsection (1) of this section, if any overpayment of tax imposed by ORS chapter 316 results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the date four months after the due date of the return for the taxable year in which such net operating loss or net capital loss arises.

(5) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270, or other provisions of this section, if the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period within which a claim for credit or refund may be filed or credit or refund allowed or made if no claim is filed shall be the period provided within subsections (1) to (4) of this section or six months after the date of the expiration of the agreed period for assessing deficiency in federal income tax, whichever period expires the later. [1957 c.632 §15 (enacted in lieu of 316.615 and 317.415); 1969 c.166 §4; 1969 c.405 §2; 1971 c.354 §5; 1971 c.507 §2; 1975 c.593 §16; 1977 c.870 §44; 1982 s.s.1 c.16 §8; 1983 c.162 §54]

Note: Section 54a, chapter 162, Oregon Laws 1983, provides:

Sec. 54a. The amendment of ORS 314.415 (4) by section 54 of this Act shall apply to refund claims for net operating loss carrybacks or net capital loss carrybacks filed on or after the effective date of this Act [October 15, 1983].

314.417 Unpaid tax or withholding lien at time of assessment. If any person neglects or refuses to pay an income tax at the time of assessment, or fails to pay to the department any amount required to be withheld under ORS 316.167 and 316.172, the amount of the unpaid tax including interest and penalty thereon shall be a lien in favor of the State of Oregon upon all property and rights to property, whether real or personal, belonging to the person. The lien shall arise at the time of assessment or the time the amount withheld is to be paid to the department and the lien shall continue until the liability for the taxes, with interest and penalty, is satisfied. [1971 c.215 §3; 1981 c.546 §1]

314.419 Foreclosure of lien. In addition to any other remedy provided by law the lien created by ORS 314.417 may be foreclosed in the following manner:

(1) The Director of the Department of Revenue shall issue an order directed to the sheriff of the county in which the property or interest in property subject to the lien is located, describing the property subject to the lien, and commanding the sheriff to seize the property specified and sell it to pay the amount shown on the order to be due. In the discretion of the director an order of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(2) If the property seized by the sheriff is personal property the sheriff shall utilize the procedures under ORS 311.640 to effect collection of the amount due.

(3) If the property seized by the sheriff is real property the sheriff shall proceed to sell the real property in the same manner that real property is sold under a writ of execution.

(4) Any property which has been sold under this section may be redeemed from the purchaser by the taxpayer or any junior lienor within 120 days from the date of the sale by paying to the purchaser the full purchase price paid plus an additional 20 percent of the purchase price.

(5) In any proceeding under this section to sell property to foreclose a lien, the taxpayer may claim any exemption to which he is entitled under the laws of this state relating to property exempt from execution. [1971 c.215 §4]

314.420 [1957 c.632 §16 (enacted in lieu of 316.620, 317.370 and 317.420); 1969 c.166 §5; repealed by 1971 c.354 §7]

314.421 When lien valid. The lien imposed by ORS 314.417 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor or judgment creditor until a warrant is issued and docketed under ORS 314.430. [1971 c.215 §5]

314.423 Status of lien. (1) After a warrant has been docketed under ORS 314.430, the lien imposed by ORS 314.417 shall be subordinate to:

(a) Any interest in real property to the same extent that a judgment lien docketed at the same time the warrant was docketed would be subordinate to the interest, and

(b) Any interest in personal property to the same extent that a security agreement filed under the Uniform Commercial Code at the same time the warrant was filed would be subordinate to the interest.

(2) After a warrant has been docketed under ORS 314.430, the lien imposed by ORS 314.417

shall not be valid as to a purchaser, security interest holder or lienholder in a sale, security agreement or lien arising out of the following types of property or property transactions unless the purchaser, security interest holder or lienholder had actual knowledge of the lien:

(a) Securities as defined in ORS 78.1020;

(b) Retail purchases in the ordinary course of business;

(c) Casual sales of personal property;

(d) Attorney's liens;

(e) Insurance contract loans; or

(f) Passbook loans. [1971 c.215 §§6, 7]

314.425 Examining books, records or persons. (1) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, may examine or cause to be examined by an agent or representative designated by it for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the taxpayer or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The department shall have authority, by order or subpena to be served with the same force and effect and in the same manner that a subpena is served in a civil action in the circuit court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of any law imposing tax on or measured by net income.

(2) If any person fails to comply with any subpena or order of the department or to produce or permit the examination or inspection of any books, papers or documents pertinent to any investigation or inquiry under this section, or to testify to any matter regarding which he may be lawfully interrogated, the department may apply to the circuit court for the county in which the person resides for an order to the person to attend and testify, or otherwise comply with the demand or request of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to comply with the request on demand of the department within 10 days after service of the order (or such further time as the court may grant) or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state. [1957 c.632 §17 (enacted in lieu of 316.625 and 317.425)]

314.430 Warrant for collection of taxes. (1) If any tax imposed upon or measured by net income or any portion of such tax is not paid within 30 days after it becomes due (or within five days, in the case of the termination of the tax year by the department under the provisions of ORS 314.440) and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the department, the department may issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or

compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance the assessment record of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record. [1957 c.632 §18 (enacted in lieu of 316.630 and 317.430); 1959 c.74 §1; 1959 c.234 §1; 1975 c.593 §17; 1983 c.696 §12]

314.435 [1957 c.632 §19 (enacted in lieu of 316.635 and 317.435); 1959 c.147 §1; repealed by 1961 c.573 §2 (305.140 enacted in lieu of 314.435, 315.635 and 321.085)]

314.440 Tax as debt; termination of taxable period and immediate assessment of tax. (1) Every tax imposed by any law imposing a tax upon or measured by net income, and all increases, interest and penalties thereon shall become, from the time such liability is incurred, a personal debt, due the State of Oregon, from the person or persons liable therefor.

(2) If the department finds that a taxpayer designs quickly to depart from the state or to remove his property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past tax year or the tax year then current unless such proceedings be brought without delay, the department shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the department, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding tax year (if no return has been filed therefor, whether or not the time otherwise allowed by law for filing such return and paying the tax has expired), and shall assess additional tax for any years open to assessment under the provisions of the applicable law. The department shall give notice to the taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his last-known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the findings of the department, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design and the certificate of the department of the mailing or issuing of the notice and findings specified in this section is presumptive evidence that the notice and findings were mailed or issued. [1957 c.632 §20 (enacted in lieu of 316.640, 317.440 and 317.445)]

314.445 [1957 c.632 §21 (enacted in lieu of 316.650 and 317.455); 1959 c.234 §2; repealed by 1973 c.402 §30]

314.450 [Subsections (1) and (2) enacted as 1957 c.632 §22 (enacted in lieu of 316.655 and 317.460); subsection (3) enacted as 1957 c.545 §2; 1959 c.650 §1; 1969 c.520 §40; 1971 c.418 §11; repealed by 1973 c.402 §30]

314.455 [1957 c.632 §23 (enacted in lieu of 316.660 and 317.465); 1971 c.507 §3; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.455)]

314.460 [1957 c.632 §24 (enacted in lieu of 316.665 and 317.470); 1961 c.533 §52; 1967 c.78 §2; 1975 c.381 §4; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.460)]

314.465 [1957 c.632 §25 (enacted in lieu of 316.670 and 317.475); 1961 c.533 §53; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.465)]

314.466 Audits, deficiencies, assessments, refunds and appeals governed by ORS chapter 305. The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals to the director of the department and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of taxes, penalties and interest imposed under this chapter and ORS chapters 316, 317 and 318, except where the context requires otherwise. [1977 c.870 §23 (enacted in lieu of 314.405, 314.455, 314.460 and 314.465)]

314.470 [1957 c.632 §26 (enacted in lieu of 316.675 and 317.480); repealed by 1961 c.20 §1]

ESTIMATED TAX PROCEDURE

314.505 Estimate of tax liability by corporations. For tax years beginning on and after January 1, 1974, every corporation expecting to have a tax liability under either ORS chapter 317 or 318 of $500 or more shall make an estimate of tax liability for the corporation's tax year and pay the amount of tax determined as provided in ORS 314.515. For purposes of this section, estimated tax liability means the tax computed under ORS chapter 317 or 318 less the credits allowed therein. [1973 c.292 §1]

314.515 Instalment schedule for payment of estimated tax. A corporation required under ORS 314.505 to make payments of estimated tax shall make the payments to the

Department of Revenue in instalments as follows:

(1) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the fourth month of the taxable year.

(2) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the sixth month of the taxable year.

(3) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the ninth month of the taxable year.

(4) The balance of the estimated tax shall be paid on or before the 15th day of the 12th month of the taxable year. [1973 c.292 §2; 1981 c.678 §4]

314.525 Underpayment of estimated tax; interest; nonapplicability of penalties. (1) An underpayment of estimated tax under ORS 314.505 to 314.525 will be considered to have occurred if:

(a) The estimated tax is not paid as required.

(b) The estimated tax paid is less than that which would be required to be paid if the estimated tax liability were equal to 90 percent of the tax shown on the return for the tax year or, if no return was filed, 90 percent of the tax for such tax years.

(c) The estimated tax paid is less than the amount which would have been required to be paid if the tax were computed at the rates applicable to the tax year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to the preceding tax year.

(d) The estimated tax paid is less than an amount equal to 90 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the instalment is required to be paid.

(2) Interest shall accrue on the underpayment of estimated tax under ORS 314.505 to 314.525 at the rate established under ORS 305.220, for each month or fraction thereof during which period the estimated tax or any instalment thereof remains unpaid. The penalty provisions contained in ORS chapters 314, 317 and 318 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 314.505 to 314.525. [1973 c.292 §3; 1981 c.678 §5; 1982 s.s.1 c.16 §9; 1983 c.162 §78]

Note: Section 79, chapter 162, Oregon Laws 1983, provides:

Sec. 79. The amendments to ORS 314.525 by section 78 of this Act shall apply to tax years beginning on or after January 1, 1984.

DIVISION OF INCOME FOR TAX PURPOSES
(General Provisions)

314.605 Short title; construction. (1) ORS 314.605 to 314.670 may be cited as the Uniform Division of Income for Tax Purposes Act.

(2) ORS 314.610 to 314.670 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1965 c.152 §§20, 21]

314.610 Definitions for ORS 314.605 to 314.675. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, the management, use or rental, and the disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

(4) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.

(5) "Nonbusiness income" means all income other than business income.

(6) "Public utility" means any business entity whose principal business is ownership and operation for public use of any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(7) "Sales" means all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

(8) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. [1965 c.152 §2]

314.615 When allocation of income from business activity required. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in ORS 314.605 to 314.675. Taxpayers engaged in activities as a financial organization or public utility shall report their income as provided in ORS 314.280 and 314.675. [1965 c.152 §3]

314.620 When taxpayer is considered taxable in another state. For purposes of allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. [1965 c.152 §4]

(Allocation of Nonbusiness Income)

314.625 Certain nonbusiness income to be allocated. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in ORS 314.630 to 314.645. [1965 c.152 §5]

314.630 Allocation to this state of net rents and royalties. (1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state (a) if and to the extent that the property is utilized in this state, or (b) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession. [1965 c.152 §6]

314.635 Allocation to this state of capital gains and losses. (1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if (a) the property had a situs in this state at the time of the sale, or (b) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state. [1965 c.152 §7]

314.640 Allocation to this state of interest and dividends. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state. [1965 c.152 §8]

314.645 Allocation to this state of patent and copyright royalties. (1) Patent and copyright royalties are allocable to this state (a) if and to the extent that the patent or copyright is utilized by the payer in this state, or (b) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located. [1965 c.152 §9]

(Apportionment of Business Income)

314.650 Formula for apportionment of business income. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. [1965 c.152 §10]

314.655 Determination of "property factor." (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property. [1965 c.152 §§11, 12, 13]

314.660 Determination of "payroll factor." (1) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(2) Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state; or

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. [1965 c.152 §§14, 15]

314.665 Determination of "sales factor." (1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States Government or (B) the taxpayer is not taxable in the state of the purchaser.

(3) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance. [1965 c.152 §§16, 17, 18]

(Procedure Where Ordinary Determination Not Satisfactory)

314.670 Additional methods to determine extent of business activity in this state. If the allocation and apportionment provisions of ORS 314.610 to 314.665 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for and the department may permit, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one or more of the factors;

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. [1965 c.152 §19]

(Apportionment of Net Loss)

314.675 Apportionment of net loss; net loss deduction; limitations. If the operations of a taxpayer subject to ORS 314.280 or 314.615 result in a net loss, that net loss shall be apportioned in the same manner as the net income so as fairly and accurately to reflect the net loss of the business done within this state. The net loss applicable to Oregon income pursuant to this section shall then become the net loss deduction for subsequent years which may be deducted from apportioned net income in the same manner as set forth in the Personal Income Tax Act of 1969, and in ORS chapters 317 and 318. The limitations as to the amount deductible and the time limitations in those statutes shall apply to the apportioned net loss deduction computed pursuant to this section. [1965 c.152 §23; 1969 c.493 §89; 1983 c.162 §55]

(Application)

314.695 Application of ORS 314.280 and 314.605 to 314.675. The provisions of ORS 314.280 and 314.605 to 314.675 apply to the allocation and apportionment of the income of corporations and nonresident individuals, and do not apply to the income of resident individuals, resident estates, and resident trusts taxable as provided in the Personal Income Tax Act of 1969. [1967 c.60 §2; 1969 c.493 §90]

EFFECT OF MULTISTATE TAX COMPACT

314.705 Computation of tax when income reported as percentage of sales volume. Any taxpayer electing in any year to report and pay an income tax on the basis of a percentage of sales volume, pursuant to Article III, section 2 of the Multistate Tax Compact, shall pay a tax computed at one-fourth of one percent of the dollar volume of gross sales in Oregon, except that if the taxpayer's return on sales for its business is less than five percent, it shall pay a tax computed on the basis of one-eighth of one percent of such volume. [1967 c.242 §2]

314.710 Application to allocation and apportionment of income. The provisions of Articles III and IV of the Multistate Tax Compact apply to the allocation and apportionment of the income of corporations and nonresident individuals and do not apply to income of resident individuals, resident estates and resident trusts, taxable as provided in the Personal Income Tax Act of 1969. [1967 c.242 §7; 1969 c.493 §91]

ADMINISTRATIVE PROVISIONS

314.805 Department to administer and enforce laws; enforcement districts; branch offices. The department shall administer and enforce the tax imposed by any law imposing tax upon or measured by net income. For this purpose the department may divide the state into districts. In each district a branch office may be established. The department may, from time to time, change the limits of such districts. [1957 c.632 §27 (enacted in lieu of 316.705 and 317.505)]

314.810 Administering oaths and taking acknowledgments. All officers empowered by law to administer oaths, the department, agents, auditors and such other employes as the department may designate, shall have the power to administer an oath to or take the acknowledgment of any person in respect of any return or report required by statute or the rules and regulations of the department. [1957 c.632 §29 (enacted in lieu of 316.715)]

314.815 Rules and regulations. The department may, from time to time, make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to enforce income tax laws. [1957 c.632 §30 (enacted in lieu of 316.720 and 317.505)]

314.820 [1957 c.632 §31 (enacted in lieu of 316.725 and 317.520); 1969 c.97 §2; repealed by 1973 c.402 §30]

314.825 [1957 c.632 §32 (enacted in lieu of 316.730 and 317.525); repealed by 1973 c.402 §30]

314.830 [1957 c.632 §33 (enacted in lieu of 316.735 and 317.530); repealed by 1965 c.44 §1]

314.835 Divulging particulars of returns and reports prohibited. Except as otherwise specifically provided by law, it shall be unlawful for the department or any officer or employe of the department to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required in the administration of ORS 310.630 to 310.690, required in the administration of any local tax pursuant to ORS 305.620, or required under a law imposing a tax upon or measured by net income. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 314.840 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpena or judicial order shall be issued compelling the department or any of its

officers or employes, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues. As used in this section, "officer," "employe" or "person" includes an authorized representative of the officer, employe or person, or any former officer, employe or person, or an authorized representative of such former officer, employe or person. [1957 c.632 §34 (enacted in lieu of 316.740 and 317.535); 1971 c.682 §1; 1975 c.789 §13; 1979 c.690 §1]

314.840 Persons to whom information may be furnished. (1) The department may:

(a) Furnish any taxpayer or authorized representative, upon request of the taxpayer or representative, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employe of the Executive Department duly authorized or employed to prepare revenue estimates, or a person contracting with the Executive Department to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.202 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342 to 291.348. The information disclosed or to which access is given under this subparagraph shall be confined to the identity of a corporate taxpayer, the amount of the corporate tax liability of the corporate taxpayer and the amount of the payments made by the corporation to the Department of Revenue under the corporate excise and income tax laws of this state. Any officer, employe or person furnished or granted access to information under this subparagraph shall not remove the information from the premises of the Department of Revenue.

(b) The Commissioner of Internal Revenue or authorized representative, for tax purposes only.

(c) The proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if such state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(d) The Multistate Tax Commission or its authorized representatives, for tax purposes only. However, the Multistate Tax Commission may make such information available to the Commissioner of Internal Revenue or the proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if the state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(e) The Attorney General, assistants and employes in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employes of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department

deems disclosure or access necessary for such employes to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

(g) Other persons, partnerships, corporations and other legal entities, and their employes, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

(h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(i) The Workers' Compensation Board, to the extent the board requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS 656.001 to 656.794 on the amount of wages or earned income received by an individual.

(j) Any agency of the State of Oregon, or any person, or any officer or employe of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under section 2, Article VI of the Oregon Constitution; the Corporation Commissioner pursuant to ORS 57.850; the Adult and Family Services Division of the Department of Human Resources pursuant to ORS 314.860 and 418.135; the Support Enforcement Division of the Department of Justice and district attorneys pursuant to ORS 418.135; and the State Board of Tax Service Examiners, pursuant to ORS 673.710.

(3) Each officer or employe of the department and each person described or referred to in paragraph (a) or (e) to (j) of subsection (2) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835. [1957 c.632 §35 (enacted in lieu of 316.745 and 317.540); 1959 c.114 §1; 1971 c.682 §2; 1973 c.106 §1; 1975 c.368 §9; 1975 c.789 §19; 1977 c.430 §3; 1979 c.690 §2; 1981 c.827 §1]

314.845 Certificate of department as evidence. The certificate of the department to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under any law imposing a tax upon or measured by net income, shall be prima facie evidence that the tax has not been paid, that the return has not been filed or that the information has not been supplied. [1957 c.632 §36 (enacted in lieu of 316.750 and 317.545)]

314.850 Statistics. The department shall prepare and publish annually statistics, reasonably available, with respect to the operation of income tax laws, including amounts collected, classification of taxpayers and other facts considered pertinent and valuable. [1957 c.632 §37 (enacted in lieu of 316.755)]

314.855 Rewards for information. The department may pay rewards to persons, other than officers or employes of the department, furnishing information that leads to the recovery of tax from other persons guilty of violating the provisions of income tax laws. Such rewards shall not exceed 10 percent of the net amount of tax, penalty and interest recovered by suit or otherwise and shall be paid only in cases where such evasions of tax would not be disclosed by the audit of returns or from other information available to the department. [1957 c.632 §38 (enacted in lieu of 316.760 and 317.550)]

314.860 Disclosure of homeowner or renter refund information to assist in recovery of public assistance overpayments; requests for information public record. (1) The Department of Revenue may disclose certain information relative to applicants for homeowner or renter refund, or elderly rental assistance, to the Assistant Director for Adult and Family Services or to employes of the Adult and Family Services Division. The information disclosed by the Department of Revenue shall be confined to the names, addresses and social security numbers of applicants for refund under ORS 310.630 to 310.690 for the current and preceding calendar year. The information requested shall be confined to those names, addresses and social security numbers which will assist in the collection of debts due and owing to the State of Oregon arising from client-caused

overpayments of public assistance and shall be used solely for such purpose and shall not be used or disclosed for any other purpose. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2).

(2) Disclosure under this section shall be given only upon written request of the Assistant Director for Adult and Family Services. The form for the request shall be prescribed by the assistant director and approved by the Director of the Department of Revenue.

(3) The Department of Revenue shall keep on file the requests for disclosure made pursuant to this section. The requests constitute a public record within the meaning of ORS 192.410 to 192.500. [1979 c.690 §18]

Note: 314.860 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.865 Use of certain information for private benefit prohibited. A person granted access to information described in ORS 314.835 under ORS 314.840 (2)(a)(B) for the purpose of preparing revenue estimates shall not knowingly or intentionally use the information disclosed or the information to which access is given for any purpose if the effect of the use is private pecuniary benefit for the person or for a member of the person's household. [1981 c.827 §2]

Note: 314.865 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

314.990 [Repealed by 1953 c.310 §3]

314.991 Penalties. (1) A person or an officer or employe of a corporation or a member or employe of a partnership who violates ORS 314.075 is liable to a penalty of not more than $1,000, to be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction, and is also guilty of a Class C felony. The penalties provided in this subsection shall be additional to all other penalties in this chapter.

(2) Violation of ORS 314.835 is a Class C felony. If the offender is an officer or employe of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter. [1957 c.632 §39 (enacted in lieu of 316.990 and 317.990); 1971 c.682 §3; 1973 c.402 §26; 1981 c.724 §1]

Note: Section 2, chapter 724, Oregon Laws 1981, provides:

Sec. 2. The amendments to ORS 314.991, 118.990 and 119.990 by sections 1, 6 and 7 of this Act shall govern the punishment for any offense committed on or after the effective date of this Act [November 1, 1981]. The punishment for any offense committed before the effective date of this Act shall be according to the law existing at the time of the commission of the offense.